



STATE OF NEW JERSEY

In the Matter of Ismael Girado :
 Ancora Psychiatric Hospital, :
 Department of Health :

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2018-2255, 2018- :
 2254, 2018-2253, 2018-2252, 2018- :
 2251 and 2018-2250 :
 OAL DKT. NOS. CSV 02425-18, :
 02427-18, 02429-18, 02431-18, 02432- :
 18 and 02433-33 :
 (Consolidated) :

ISSUED: APRIL 17, 2020 BW

The appeals of Ismael Girado, Human Services Assistant, Ancora Psychiatric Hospital, Department of Health, six removals effective January 12, 2018, on charges, were heard by Administrative Law Judge David M. Fritch, who rendered his initial decision on March 2, 2020. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on April 15, 2020, accepted and adopted the Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission dismisses the appeals based on appellant's failure to appear.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15TH DAY OF APRIL, 2020

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CSV 02425-18,
CSV 02427-18, CSV 02429-18,
CSV 02431-18, CSV 02432-18, and
CSV 02433-18

AGENCY DKT. NOS. 2018-2255,
2018-2254, 2018-2253, 2018-2252,
2018-2251, and 2018-2250

(CONSOLIDATED)

**IN THE MATTER OF ISMAEL GIRADO,
DEPARTMENT OF HEALTH, ANCOR
PSYCHIATRIC HOSPITAL.**

**William A. Nash, Esq., for appellant Ismael Girardo (Nash Law Firm, LLC,
attorneys)**

**Rimma Razhba, Deputy Attorney General, for respondent Ancora Psychiatric
Hospital (Gurbir S. Grewal, Attorney General of New Jersey, attorney)**

BEFORE DAVID M. FRITCH, ALJ:

Record Closed: February 28, 2020

Decided: March 2, 2020

STATEMENT OF THE CASE

The appellant, Ismael Girado, initiated the present actions by appealing the decision of his employer, the Department of Health, Ancora Psychiatric Hospital, on six separate disciplinary actions terminating his employment on charges of chronic absenteeism, conduct unbecoming a public employee, and other sufficient cause.

PROCEDURAL HISTORY

The appellant appealed the dismissals, and the matters were heard before a hearing officer on December 21, 2017. The charges were sustained by the hearing officer and Final Notices of Disciplinary Action (FNDA) were issued on January 11, 2018. The appellant filed appeals with the Civil Service Commission, and the matters were transferred to the Office of Administrative Law (OAL) as contested cases where they were filed on February 14, 2018. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matters were consolidated in an order issued on October 22, 2018.

An in-person prehearing status conference was scheduled to be held on January 14, 2020, at 1:00 p.m. in the offices of the OAL in Mercerville, New Jersey. Notice of this prehearing conference was sent via email to the parties on January 7, 2020. On the date and time of the scheduled prehearing conference, however, the appellant failed to appear. The appellant's attorney appeared at the conference and confirmed, on the record, that he had received notice from the OAL of the scheduled conference and he notified his client via regular and certified mail, as well as attempted to contact his client via telephone, to remind him of the scheduled conference. The appellant has been unresponsive to his attorney's efforts to contact him, and his attorney received no communications from the appellant indicating that he would be otherwise unable to appear at the scheduled prehearing conference or to provide any explanation for his failure to appear at the designated place and time for the conference. The OAL also received no communications from the appellant indicating any problems with his attendance at the scheduled prehearing conference.

Following the appellant's non-appearance for the scheduled proceeding on January 14, 2020, pursuant to N.J.A.C. 1:1-14.4, the matter was held for one day before taking any action to give the appellant the opportunity to provide an explanation for his non-appearance. As of February 28, 2020, the appellant has not communicated with the OAL or his attorney or otherwise provided any explanation for his failure to appear for the prior scheduled conference.

FACTUAL FINDINGS

As the relevant facts are procedural, I **FIND** the following facts:

- On January 7, 2020, the appellant's attorney was sent notice via email from the OAL that an in-person prehearing conference in his pending appeal was to be held at the OAL office in Mercerville, New Jersey on January 14, 2020, at 1:00 p.m.
- The appellant's attorney received the notice of the scheduled conference and forwarded the notice to the appellant via regular mail and certified mail.
- The appellant's attorney also attempted to contact the appellant multiple times via telephone to confirm his attendance at the scheduled conference, but was unsuccessful in reaching him and the appellant has been unresponsive to his attorney's communications.
- On January 14, 2020, the appellant did not appear for the scheduled conference and, prior to the scheduled conference, the appellant did not provide any indication to his attorney or the OAL that he would be unavailable to attend.
- The appellant did not contact the OAL within twenty-four hours of his non-appearance, nor did he contact his attorney during that time to provide any explanation for his failure to participate in the designated conference on January 14, 2020.
- Following the appellant's non-appearance on the scheduled conference call on January 14, 2020, his attorney continued to try to contact him regarding this matter, but, as of February 28, 2020, his efforts to communicate with the appellant have been unsuccessful.

appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

I **CONCLUDE** that the appellant was provided with appropriate notice of a scheduled proceeding, namely an in-person prehearing status conference, to be held on January 14, 2020, at 1:00 p.m. The appellant, through his counsel, was provided with written notice of this scheduled proceedings and, despite having been provided with appropriate notice, the appellant failed to appear and failed to provide his attorney or the OAL with an explanation for his non-appearance. The appellant has further been unresponsive to subsequent efforts by his attorney to communicate with him regarding his pending matter.

The OAL did not receive “an explanation for the nonappearance within one day” of the appellant's non-appearance for this scheduled conference within the meaning of N.J.A.C. 1:1-14.4(a). Having not received an explanation from the appellant to explain his non-appearance, N.J.A.C. 1:1-14.4 directs that this tribunal “shall, unless proceeding pursuant to [N.J.A.C. 1:1-14.4(d)], direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).” As the respondent has not requested a decision on the merits of the matter be issued ex parte, no further proceedings pursuant to N.J.A.C. 1:1-14.4(d) are necessary. This tribunal, therefore, is left only with the mandate that the matter “shall” be returned to the transmitting agency for appropriate disposition. N.J.A.C. 1:1-14.4(a).

I **CONCLUDE** that the appellant has been dilatory in prosecuting his appeals, effectively abandoning the prosecution of his petitions, has been unresponsive to communications from his attorney regarding his pending matter, and failed to present good cause in a timely manner as to why his failure to appear for a previously scheduled conferences should be excused pursuant to the provisions of N.J.A.C. 1:1-14.4(c). A plain reading of N.J.A.C. 1:1-14.4(a), therefore, requires that the matter now be returned to the transmitting agency for appropriate disposition. See also N.J.A.C. 1:1-3.3(b).

- As of February 28, 2020, the appellant has not contacted the OAL or his attorney to arrange for a rescheduling of his missed prehearing conference or otherwise provide any explanation for his failure to appear on the previously scheduled conference.

LEGAL ANALYSIS

Pursuant to N.J.A.C. 1:1-14.4:

- (a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).
- (b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.
- (c) If the judge receives an explanation:
 1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or
 2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, at his or her discretion, order any of the following:
 - i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;
 - ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or
 - iii. Such other case-related action as the judge deems appropriate.
- (d) If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to

ORDER

Based on the foregoing, I **ORDER** that the clerk return the case to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

I hereby **FILE** this initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this order was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, Civil Service Commission, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 2, 2020

DATE


DAVID M. FRITCH, ALJ

Date Received at Agency:

3/2/20

Date Mailed to Parties:

3/2/20

/dw